

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.P., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Atlanta, GA, Employer**

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**Docket No. 07-1199  
Issued: October 2, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On March 30, 2007 appellant filed a timely appeal from a January 9, 2007 decision of the Office of Workers' Compensation Programs denying his claim for a heart attack. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant met his burden of proof in establishing that he sustained a heart attack while in the performance of duty causally related to factors of his federal employment.

**FACTUAL HISTORY**

On September 14, 2006 appellant, then a 54-year-old letter carrier, filed an occupational disease claim alleging that he sustained a heart attack on July 26, 2006 causally related to his federal employment. He alleged that on June 17, 2004 and other unspecified dates he was sexually harassed by a male he encountered on his mail route. Appellant was placed in an emergency off-duty status pending an investigation and had to undergo a fitness-for-duty

psychiatric evaluation. He was not permitted to return to work until an arbitrator ordered management to restore him to duty. Appellant alleged that Sarah Mitchell, a former acting manager, retaliated against him between November 30, 2005 and July 21, 2006 because he had filed a discrimination complaint with the Equal Employment Opportunity (EEO) Commission. Ms. Mitchell unfairly disciplined him, targeted him for removal and attempted to prejudice a June 7, 2006 EEO hearing by imposing herself as a material witness. She also retaliated against appellant after he reported to postal inspectors that she improperly disposed of bulk business mail in a trash dumpster. On July 26, 2006 appellant underwent heart angioplasty and incision of an intraortic balloon pump. The diagnoses included coronary artery disease and bilateral cephalic vein thromboses.

Appellant's grievance against management for issuing a seven-day suspension on September 4, 1996 (for failing to follow directions) was resolved in his favor by an arbitration award dated June 17, 1997. The arbitrator found that management erred in issuing a letter of warning on the same date for virtually the same facts and circumstances as alleged in the letter of suspension. Therefore, the suspension was punitive rather than corrective. The arbitrator ordered the restoration of all lost benefits. Appellant's grievance against management for violating the union contract by removing him from his carrier bid assignment and assigning him to inside duties (for complaints from patrons concerning his behavior), was resolved in his favor by an arbitration award dated February 23, 2005. The arbitrator found that management violated the union contract by circumventing the progressive disciplinary and corrective scheme for employees. It assigned appellant to inside duties without following the hierarchy of disciplinary measures ranging from a discussion, letter of warning or suspension to removal. Also, management had not conducted an adequate investigation into allegations of misbehavior by appellant. The arbitrator directed management to reinstate appellant to his bid assignment as a city carrier. She also directed management to compensate him for any loss of wages, salary and benefits caused by the reassignment.

A May 15, 2006 Step B employing establishment grievance decision rescinded a March 24, 2006 seven-day suspension. A Step B grievance decision dated May 17, 2006 rescinded a February 16, 2006 letter of warning. A Step B grievance decision dated May 17, 2006 regarding management's denial of appellant's request for 35.3 hours of sick leave indicated that the leave without pay (LWOP) status for these hours would be changed to sick leave status. These three decisions noted that management had not provided information concerning the circumstances involving the suspension, letter of warning and denial of sick leave. The decisions were resolved based solely on the information presented by appellant. An EEO complaint was dismissed on June 8, 2006 following settlement reached on June 6, 2006. The EEO complaint involved allegations that the employing establishment placed appellant on emergency off-duty status, ordered him to undergo a psychiatric fitness-for-duty evaluation and improperly disclosed his confidential medical records. There was no admission or finding of wrongdoing by management in the EEO settlement agreement. A copy of a dispute resolution between appellant and management dated June 24, 2006 indicated that a 14-day paper suspension for appellant was rescinded. There is no language in the resolution indicating a finding of wrongdoing by management.

In a September 7, 2006 report, Dr. Anita R. Bhandiwad, a Board-certified internist specializing in cardiovascular disease, described appellant's treatment for his coronary artery disease. She did not address the issue of causal relationship.

In reports dated September 18 and 28, 2006, Dr. Benjamin E. Woods, an attending specialist in internal medicine, diagnosed status post myocardial infarction (heart attack), coronary artery disease, cryogenic shock and bilateral cephalic vein thromboses. The history of the condition given by appellant was that he had experienced stress, anxiety and sleep deprivation between June 7, 2004 and July 21, 2006. On December 20, 2006 Dr. Woods stated that appellant had no history of high blood pressure, heart disease, diabetes or hypercholesterolemia prior to his July 26, 2006 heart attack.

By decision dated January 9, 2007, the Office denied appellant's claim on the grounds that the evidence did not establish that appellant's heart attack was caused by compensable employment factors.<sup>1</sup>

### **LEGAL PRECEDENT**

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with employment but nevertheless does not come within the coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.<sup>2</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>3</sup>

Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.<sup>4</sup>

Where the claimant alleges compensable factors of employment, he must substantiate such allegations with probative and reliable evidence.<sup>5</sup> The fact that a claimant has established compensable factors of employment does not establish entitlement to compensation. The employee must also submit rationalized medical opinion evidence establishing that he has an

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<sup>1</sup> Subsequent to the January 19, 2007 Office decision, appellant submitted additional evidence. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Michael Thomas Plante*, 44 ECAB 510 (1993).

<sup>5</sup> *Joel Parker, Sr.*, 43 ECAB 220 (1991).

emotional condition that is causally related to the compensable employment factor.<sup>6</sup> The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific compensable employment factors identified by the claimant.<sup>7</sup>

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors of employment which may be considered by a physician when providing an opinion on causal relationship and which are not deemed compensable factors of employment and may not be considered.<sup>8</sup> When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor.<sup>9</sup> When the matter asserted is a compensable factor of employment and the evidence of record establish the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>10</sup> As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by the evidence.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has failed to meet his burden of proof in establishing that his heart attack on July 26, 2006 is causally related to factors of his federal employment.

Several allegations made by appellant concern personnel or administrative matters. The Board has held that an administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.<sup>12</sup> In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>13</sup> A May 15, 2006 Step B employing establishment grievance decision rescinded a March 24, 2006 seven-day suspension. A Step B decision dated May 17, 2006 rescinded a February 16, 2006 letter of warning. A Step B decision dated May 17, 2006 changed appellant's LWOP status to sick leave status. These decisions noted that management had not provided information explaining its

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<sup>6</sup> *James W. Griffin*, 45 ECAB 774 (1994).

<sup>7</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>8</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>9</sup> *Margaret S. Krzycki*, 43 ECAB 496 (1992).

<sup>10</sup> *See Charles D. Edwards*, 55 ECAB 259 (2004).

<sup>11</sup> *See Charles E. McAndrews*, 55 ECAB 711 (2004).

<sup>12</sup> *Charles D. Edwards*, *supra* note 10.

<sup>13</sup> *Janice I. Moore*, 53 ECAB 777 (2002).

position regarding appellant's allegations. Therefore, the allegations were resolved based solely on the information presented by appellant. Because only appellant's position was considered in these decisions, the merits of management's position regarding these administrative matters was not considered. Therefore, these administrative matters are not established as compensable factors of employment. An EEO complaint filed by appellant was dismissed on June 8, 2006 with no admission or finding of wrongdoing by management. The EEO complaint involved allegations that the employing establishment placed him on emergency off-duty status, ordered appellant to undergo a psychiatric fitness-for-duty evaluation and improperly disclosed his confidential medical records. A May 24, 2006 dispute resolution rescinded a 14-day paper suspension. However, there was no language in the resolution indicating a finding of wrongdoing by management. The mere fact that personnel actions were later modified or rescinded does not, in and of itself, establish error or abuse.<sup>14</sup> There is insufficient evidence of error or abuse in the handling of these administrative matters. There is also insufficient evidence that the employing establishment improperly disclosed appellant's medical records. Therefore, these allegations are not deemed compensable factors of employment.

There are several arbitration decisions which contain a finding that management erred in handling disciplinary actions with regard to appellant. Appellant's grievance against management for issuing a seven-day suspension on September 4, 1996 was resolved in his favor by an arbitration award dated June 17, 1997. The arbitrator found that management erred in issuing a letter of warning and a letter of suspension on the same date regarding essentially the same matter. Therefore, the suspension was punitive rather than corrective. Appellant's grievance against management for removing him from his carrier bid assignment and assigning him to inside duties was resolved in his favor by an arbitration award dated February 23, 2005. The arbitrator found that management violated the union contract by circumventing the progressive disciplinary process. Also, management had not conducted an adequate investigation into allegations of appellant's misbehavior.

As noted, the fact that a claimant has established a compensable factor of employment does not establish entitlement to compensation. A claimant must also submit rationalized medical opinion evidence establishing that he has an emotional condition that is causally related to the compensable employment factor. In this case, the medical evidence does not establish that appellant's stress condition and heart attack was caused by the work factors identified in the arbitration decisions involving his complaints against management. Dr. Bhandiwad did not address the issue of causal relationship in her report. Dr. Woods noted that appellant gave a history of experiencing stress, anxiety and sleep deprivation between June 7, 2004 and July 21, 2006 caused by his job. However, Dr. Woods did not provide a rationalized medical opinion explaining how appellant's stress and heart condition was causally related to the employment incidents or situations addressed in the arbitration decisions. Therefore, appellant has not established that his heart condition was causally related to compensable employment factors.

Appellant alleged that on several occasions he was sexually harassed by a male he encountered on his mail route. There is insufficient evidence to establish that this occurred.

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<sup>14</sup> *Michael Thomas Plante, supra* note 4.

However, even if it was established as factual, there is no medical evidence that his stress and heart attack was caused by these incidents. Appellant alleged that Ms. Mitchell retaliated against him because he had filed an EEO complaint. He alleged that she unfairly disciplined him, targeted him for removal, attempted to prejudice his EEO case hearing by imposing herself as a witness and retaliated against him after he reported that she improperly disposed of mail. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute a compensable employment factor.<sup>15</sup> Mere perceptions of harassment or discrimination are not compensable under the Act. Appellant's burden of proof is not discharged with allegations alone. He must support his charges with probative and reliable evidence.<sup>16</sup> Regarding the harassment from Ms. Mitchell, appellant contended that his complaints concerning her disciplinary actions were overturned in the EEO decision. However, as noted, the EEO complaint was dismissed with no admission or finding of wrongdoing by management. There is insufficient evidence that Ms. Mitchell harassed or discriminated against appellant. Therefore, these allegations are not deemed compensable employment factors.

For the foregoing reasons, appellant has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.

### **CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an emotional condition in the performance of duty causally related to compensable factors of employment.

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<sup>15</sup> *Id.*

<sup>16</sup> *Cyndia R. Harrill*, 55 ECAB 522 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 9, 2007 is affirmed.

Issued: October 2, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board